IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.621 OF 1994

Pravin s/o Govind Kalbhor ...Petitioner
Vs.
Municipal Corporation of Greater
Bombay and Another ...Respondents

Shri A.V. Anturkar i/by Shri A.S. Dubey for the Petitioner.
Ms Aruna Savla for the Respondents.

CORAM : H.L. GOKHALE AND ABHAY S. OKA, JJ.

DATE ON WHICH ARGUMENTS ARE HEARD AND JUDGMENT IS RESERVED : MARCH 03, 2006.

DATE ON WHICH JUDGMENT IS PRONOUNCED: MARCH 14, 2006.

JUDGMENT (PER A.S.OKA, J):

1. By order dated 28th February, 2006 passed in the Notice of Motion No.108 of 2006 we had directed that this Writ Petition will be listed for final hearing alongwith Notice of Motion. Accordingly, we have taken up this Petition for final hearing.

2. By this Petition under Article 226 of the Constitution of India the Petitioner has taken exception to orders dated 11th February, 1994 passed by the Deputy Municipal Commissioner of the first Respondent- Mumbai Municipal Corporation by which the the Applications made by the Petitioner herein and twenty-seven other persons whose names appear in Exhibit A to the Petition for regularisation of their

structures/stalls were rejected.

3. The Petitioner has filed this Petition by invoking provisions of order 1 Rule VIII of the Code of Civil Procedure, 1908. In prayer (a) of the Petition, the Petitioner has sought leave to file this Petition on behalf of himself and on behalf of all stall owners mentioned in Exhibit A to the Petition who are twenty-eight in number.

4. The case of the Petitioner is that the Petitioner and twenty-seven other persons were having stalls at Vikroli Park Site. In the year 1976, the said stalls were demolished for road widening and in accordance with the policy of the first Respondent, the said persons were allotted alternate pitches at Shivaji Nagar, Govandi. According to the case of the Petitioner allotment of the pitches was made in the year 1982 by a letter signed by Ward Officer. According to the case of the Petitioner, the allotment of the pitches was approved by the first Respondent-Corporation in the year 1986. It is an admitted position that the Petitioner and other stall holders constructed stalls on the pitches allegedly allotted to them without obtaining prior permission of the first Respondent.

5. The stall holders were served notices under Section 351 of the Bombay Municipal Corporation Act, 1888 on 02nd July, 1987. Being aggrieved by the notices under Section 351 of the said Act of 1888, the stall holders filed suits in the City Civil Court and prayed for temporary injunction. In the said suits the City Civil Court passed an order directing the second Respondent-Deputy Municipal Corporation to give hearing to the stall holders and to pass a speaking order. Accordingly, after giving hearing to the stall holders the second Respondent passed an order dated 02nd August, 1888 holding that there was no allotment of pitches to the stall holders and the construction made by the stall holders was totally unauthorised. He directed the stall holders to remove the construction. Amendment was carried out to the suits for the purposes of incorporating challenge to the said order of demolition. Notices of Motion taken out by the stall holders in these suits were dismissed by a common order dated 19th December, 1988 passed by the City Civil Court. The stall holders preferred separate Appeals to this Court challenging the order rejecting Notices of Motion. By Judgment and Order dated 22nd and 23rd November, 1993 this Court dismissed the Appeals. Thereafter, the stall holders

applied to the second Respondent for regularisation of their structures on the basis of the observation made by this Court while dismissing the Appeals. The order impugned in this Petition was passed on the Applications made by the stall holders. The grounds given for rejection of Applications for regularisation in the impugned order dated 11th February, 1994 are (i) that the allotment letters were obtained fraudulently, (ii) the structures were affected by 200 ft. vide Development Plan Road and (iii) the structures were unauthorised.

6. One Prakash J. Patil, Assistant Commissioner of first Respondent has filed affidavit-in-reply opposing the Petition. It is submitted in the reply that the allotment letters are fraudulently obtained by the stall holders and therefore, stall holders have no right, title and interest in respect of the pitches.

7. Shri Anturkar, learned Counsel appearing for the Petitioner submitted that while passing the order on notice under section 351 of the said Act of 1888, the second Respondent had no jurisdiction to decide the issue whether the allotment orders were fabricated or illegal. He submitted that even assuming that he

had jurisdiction to decide the said issue, he should have given opportunity to the Petitioner and other stall holders to satisfy him about the legality and genuineness of the allotment letters. He submitted that in the letters of allotment, there was a reference to a decision of the Deputy Municipal Commissioner of allotting the pitches to the stall holders. He submitted that the order impugned by which applications for regularisation were rejected merely states that Ward Officer has disowned his signatures on the letters of allotment during the course of departmental enquiry initiated against him. Shri. Anturkar further submitted that even in notice under section 351 of the said Act of 1888 no assertion was made regarding fabrication of allotment letters or regarding illegality of the allotment. He submitted that the stalls are not at all affected by the Development Plan Road. He pointed out that the Petitioner and other stall holders have right to occupy the pitches as the stall holders were rehabilitated on the said pitches after evicting them from the places where they were carrying on the business at Vikroli. He submitted that the stall holders were affected by road widening project at Vikroli and that is how allotment of pitches was made in their favour at the present site.

8. Ms Aruna Savla, the learned Counsel appearing for the Respondents submitted that there is no legal allotment of pitches in favour of the stall holders. she submitted that stalls were constructed without obtaining permission. She pointed out that the stalls are affected by a development plan road. She, therefore, submitted that the Petitioner and other stall holders are not entitled to any protection.

9. We have considered the submissions. One of the letters of allotment is annexed to the Petition. The said letter of allotment records that the second Respondent has allotted squatter pitches. Clause No.9 of the alleged letter of allotment provides that squatter license will be granted to the allottee on purely temporary basis. It is stated that if the stall is found objectionable by police from traffic point of view, it will have to be shifted elsewhere. The allotment letter is allegedly signed by Ward Officer. The stall holders were served with notices under section 351 of the said Act of 1888 alleging that the stalls were illegal. As per the direction of the City Civil Court, the stall holders were heard and the Deputy Municipal Commissioner passed speaking order dated 18th August, 1988 holding that there was

no legal allotment of pitches in favour of the stall holders. The Deputy Municipal Commissioner passed the said order after perusing the relevant files. He observed that the files show that a note was put up by the Ward Officer suggesting allotment of pitches to the stall holders. On the said note, the Deputy Municipal Commissioner made an endorsement stating that the suggestion was acceptable to him. He further added that "please do not allot any pitches or shops unless there is approval of M.C./A.M.C." The Deputy Municipal Commissioner recorded a finding that no such approval of M.C. or A.M.C. was obtained by the Ward Officer. The finding recorded by the Deputy Municipal Commissioner is that there is no legal allotment of pitches in favour of the stall holders.

10. The Petitioners challenged the said order in the civil suits. However, the stall holders could not obtain any favourable order in the said suits. As stated earlier, Notices of Motion for temporary injunction were dismissed by the City Civil Court. However, stall holders preferred Appeals to this Court. The said Appeals were dismissed on merits. While dismissing the Appeals on merits, this Court observed as under:

"Shri Adhyenthaya for the appellant, however, contends that in accordance with the policy of the Municipal Corporation, these structures can still be regularised. If the structure in dispute can be regularised in accordance with any policy decision taken by the Municipal Corporation, the appellant is free to pursue such remedy as is available to him. **I am not concerned with that issue in the present Appeal. On the facts found by the Deputy Municipal Commissioner, as also by the City Civil Court, I find no reason to interfere with the impugned order.** Hence, there is no merit in the Appeal, which is accordingly dismissed." (Emphasis supplied)

11. It must be noted here that order passed under section 351 of the said Act of 1888 by the second Respondent on 18th August, 1988 has attained finality as of today. In any case the order binds all concerned parties till it is set aside. In the said order on the basis of perusal of the original files a finding has been recorded that Ward Officer could not have issued letters of allotment as there was no sanction either by the M.C. or A.M.C. After the decision of this Court in Appeal, the stall holders

applied for regularisation of the structures which shows their acceptance of the fact that the structures were not authorised or legal. The order under section 351 of the said Act of 1888 which has attained finality shows that there was no legal allotment of pitches in favour of the stall holders. It is not disputed by the stall holders that they did not obtain any permission from the Municipal Corporation before erecting stalls.

12. While passing the impugned order by which the Applications for regularisation were rejected, the Deputy Municipal Commissioner has observed that the allotment letters were obtained fraudulently. The other reason given for rejection is that the structures are affected by 200 ft. Development Plan Road. This is an independent reason with its own justification. The road concerned is Ghatkopar Mankhurd Link Road. It is always busy with heavy vehicles and traffic going from Thane and eastern suburbs of Mumbai towards Panvel and Pune. It is an admitted position that structures are unauthorised. In view of order passed under section 351 of the said Act of 1888, it is crystal clear that there was no legal allotment of pitches in favour of the stall holders. If this is the factual position, structures

unauthorizedly built on the pitches cannot be regularised and the Deputy Municipal Commissioner was right in rejecting the Application for regularisation.

13. In our view, the Deputy Municipal Commissioner was justified in rejecting the Applications for regularisation as the structures cannot be regularised. There is no merit in the Petition and the same is dismissed with no orders as to costs.

14. At the conclusion of the oral submissions, Shri Anturkar appearing for the Petitioner stated that if this Court is inclined to reject the Petition, interim order which was appearing in this Petition should be allowed to continue for atleast three months. We asked Mr. Anturkar if the stall holder wanted time to vacate but, having taken instructions, he declined to make any statement. Yet, considering the facts and circumstances of the case, we direct that the concerned structures shall not be demolished for the period of eight weeks from today.

(H.L.GOKHALE, J.)

(A.S.OKA, J.)